



U.S. Department of Justice

*United States Attorney
Eastern District of Arkansas*

FOR IMMEDIATE RELEASE
June 2, 2010

CONTACT: Jane W. Duke
United States Attorney
501-340-2600

TWO LOCAL MEN INDICTED FOR MAIL FRAUD **IN TOBACCO KICKBACK SCHEME**

LITTLE ROCK – Jane W. Duke, United States Attorney for the Eastern District of Arkansas, Christopher R. Pikelis, Special Agent in Charge, Internal Revenue Service-Criminal Investigation Division (IRS-CID) Nashville Field Office, Thomas J. Browne, Special Agent in Charge of the Little Rock Field Office of the Federal Bureau Investigation and Deputy Directory Greg Sled of the Arkansas Tobacco Control Board, announced that David Russell Thompson, age 46, of McGehee, Arkansas and Daryl Shane Smith, age 39, of Little Rock were indicted today by a federal grand jury. Thompson and Smith were charged with one count of conspiracy to violate the laws of the United States and one count of conspiracy to commit mail fraud. Thompson was additionally charged with 119 counts of mail fraud.

According to the indictment, beginning in January 2002 until approximately October 2007, Thompson, Smith, and an individual named Patrick Patton conspired to defraud the United States. Thompson and Smith caused cash to be sent from tobacco retail stores they controlled to their company, Merchants Wholesale Inc., and then caused a portion of this cash to be withheld from the bank account deposits. The withheld cash was then paid as kickbacks to the owners of those stores, including Thompson, Smith, and Patton. In 2003 and 2004 Thompson, Smith, and Patton received more than \$498,000, \$1,163,665, and \$479,944, respectively, in kickbacks. The indictment alleges that Thompson and Smith failed to report these amounts as income on their income tax returns. In the second conspiracy count, Thompson conspired with others to avoid the payment of 32% Arkansas excise tax on other tobacco products, such as cigars, pipe tobacco, and chewing tobacco.

Patton pled guilty in December 2009 to one count of conspiracy and one count of income tax evasion. Sentencing for Patton is set for August 4, 2010, by United States District Judge Susan Webber Wright.

On each of the conspiracy charges Thompson and Smith are facing a statutory term of imprisonment of not more than 5 years and a \$250,000 fine. The mail fraud counts each carry maximum penalties of no more than twenty years imprisonment, and no more than \$250,000 in fines. The actual sentence will be determined by the District Court with the advice of the U.S. Sentencing Guidelines.

This case is the result of an investigation conducted by the Internal Revenue Service - Criminal Investigation Division, the Federal Bureau of Investigation, the Bureau of Alcohol Tobacco Firearms and Explosives and the Arkansas Tobacco Control Board.

An indictment contains only allegations. The defendant is presumed innocent unless and until proven guilty.

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